IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1892 OF 2006

Manoj Omprakash Bansal ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

Shri A.M. Saroagi for the Petitioner.

Shri S.R.Shinde, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 26, 2006.

P.C.:

1. Heard Shri Saroagi for the Petitioner. The Petitioner is the accused No.2 in a complaint filed by the second Respondent under section 138 of the Negotiable Instruments Act, 1881. Order of process issued by the learned Magistrate was challenged by the Petitioner by filing Revision Application before the Sessions Court and the Revision Application was rejected on merits.

2. Shri Saroagi appearing for the Petitioner submitted that in reply to demand notice issued to the second Respondent, the petitioner had pointed out that he had already resigned as a Director of the accused No.1-Company. He submitted that though the complainant was made aware about the fact of resignation, no

averments have been made in the complaint to show how the Petitioner was liable. He, therefore, submitted that on the face of the complaint no case was made out for issuing process.

3. I have considered the submissions. Admittedly the Petitioner is the signatory to the cheque which is subject matter of the complaint. Whether the Petitioner has really resigned and if he has resigned, on what date he has resigned are the questions to be decided on evidence. Infact, alleged resignation by the Petitioner constitutes a defence to the complaint. That is the reason why the learned Additional Sessions Judge has confirmed the order issuing process by holding that it is necessary for the Petitioner to lead evidence at the time of trial. I find no error with the view taken by the learned Additional Sessions Judge. Accordingly, Petition is rejected.

4. It is made clear that nothing stated in the order of the Sessions Court as well as this order will be construed as expression or any opinion on merits of the pending complaint.

JUDGE